

Michigan Indigent Defense Commission Meeting Minutes
200 N. Washington Square, 3rd Floor
Lansing, MI 48933
Special Meeting
July 23, 2019
Time: 11:00 am

Commission Members Present

Michael Puerner, Chair (participated via telephone initially and arrived at 12:10 pm), Kimberly Buddin, Tracey Brame, Judge Thomas Boyd, Thomas Clement, Andrew DeLeeuw, Frank Eaman, Judge James Fisher, Christine Green, Joseph Haveman, James Krizan, Margaret McAvoy, Tom McMillin, John Shea, William Swor and Gary Walker

Participating via Telephone

Nancy Diehl

Commission Members Absent

Judge Jeffrey Collins and Nathaniel Crampton,

Members of the Public Participating Included:

Connie Bohatch, Malcolm Brown (via telephone), Diane Burton, Chad Catalino, Russell Church, Christopher Dennie, Bob Hamilton, Tim Havis, Ken Hinton, Mary Ann Jerge (via telephone), Elaine Moore (via telephone), Karen Moore, John Nizol, Chanta Parker, Craig Paull, Sandy Shanker, Sara Spencer-Noggle, Drew Van De Grift, Dawn Van Hoek,

Staff Members Present

Loren Khogali, Barbara Klimaszewski, Marla McCowan, Kelly McDoniel, Rebecca Mack, Susan Prentice-Sao, Christopher Sadler, Jonah Siegel, Nicole Smithson, Kristen Staley, Melissa Wangler and Marcela Westrate

In Chair Puerner's absence, acting-Chair Fisher called the Michigan Indigent Defense Commission ("MIDC" or "the Commission") meeting to order at 11:02 am.

Members of the Commission introduced themselves.

Public Comment

Drew Van De Grift offered comments on behalf of Wayne County.

Chanta Parker, Neighborhood Defender Services Detroit Managing Director, introduced herself to the Commission.

Sara Spencer-Noggle offered comments on behalf of Isabella County.

Additions to the Agenda

There were no additions to the agenda.

Consent Agenda

Judge Boyd moved that the consent agenda containing the minutes from the Commission's June 18, 2019 meeting be approved. Mr. Walker seconded the motion. The motion carried.

Executive Director Report

Ms. Khogali continues to meet with new members of the Commission and encouraged members to contact her with questions or if they need additional information.

Ms. Khogali organized a second meeting with the Michigan Association of Counties to continue reviewing the contract. This meeting focused on reporting requirements and was attended by representatives from several different systems and Mr. DeLeeuw. Dr. Siegel and Ms. Khogali met with the Criminal Justice Policy Commission's Research Director to discuss potential research collaboration between the two commissions. She met with Chief Justice Bridget McCormack to discuss the MIDCs work and overlap with the Michigan Joint Taskforce on Jail and Pretrial Incarceration and its goals.

Chair Fisher requested an update on the 36th District Court's contract. The contract has not been signed. Ms. Khogali provided background on staff's work with the 36th District Court. Judge Boyd noted that he is meeting with that bench in two weeks and is happy to help with the contract.

Conflict of Interest Policy

Chair Fisher introduced the topic. Ms. Khogali provided an overview of the policy used by the Department of Licensing and Regulatory Affairs (LARA). The Commission discussed the policy. Commissioners agreed that for purposes of this meeting, those members with conflicts would not participate in the discussion or vote of the item, which is how the Commission has operated in the past.

Ms. McAvoy moved that the issue be tabled. Judge Boyd seconded the motion. The motion carried.

Chair Puerner encouraged members to review the materials and provide feedback by the end of July so that the issue could be considered at the August meeting.

Update Regarding Treatment Court Discussion at June 18th Meeting

Ms. Khogali met with Mr. Clement regarding the funding that the State Court Administrative Office provides, and the tracking that SCAO does for other grants. Ms. Khogali will continue working with Mr. Clement to determine how much was spend for indigent defendants. Staff will work with individual systems to determine how the system wants to proceed and whether the local share will have to be recertified.

Byrne JAG Grant – FY 20

Ms. McCowan updated the Commission on the progress for the current fiscal year's project. The MIDC is contracting with Keely Blanchard, who is serving as the project manager. The MIDC has been invited to apply for a second year of funding up to \$250,000. The second year of the project would potentially expand the offering for simulated trial and core skills in several areas.

Mr. Eaman moved that staff be authorized to apply for up to \$250,000 in Byrne JAG Grant funding. Mr. Krizan seconded the motion. The motion carried. Mr. Swor abstained from the discussion and vote.

Budget Adjustments

Commissioners were provided a summary of budget adjustments that were approved by staff. These adjustments did not impact the total system cost. Budget adjustments were granted to the following systems:

- 30th District Court – Highland Park
- 37th District Court – Warren/Centerline
- 40th District Court – St. Clair Shores
- 41a2 District Court – Shelby Township
- 48th District Court – Bloomfield
- 50th District Court – Pontiac
- Macomb County
- Oakland County
- Oceana County
- Wexford/Missaukee Counties

Compliance Plan Adjustments

MIDC Staff recommends approval of three compliance plan adjustments.

The 34th District Court in the City of Romulus requested a change in attorney spending that would create a full-time attorney contract attorney. This position would serve as the MIDC coordinator.

The 48th District Court in Bloomfield Hills requested a change in attorney spending to hire a full-time Managed Assigned Counsel Coordinator to replace a non-attorney coordinator position initially included in the system's plan.

The 40th District Court in St. Clair Shores requested a change to its plan to include a Managed Assigned Council Coordinator. Initially the plan did not include this position.

Ms. McAvoy moved that the staff recommendation be adopted and that the three compliance plan adjustments listed above be approved by the Commission. Ms. Brame seconded the motion. After discussion about overall funding for FY 20 compliance plans and increasing costs, the motion carried.

Failure to Submit Financial Quarterly Reports

Ms. Khogali informed the Commission that the 38th District Court in Eastpointe was the only system that failed to provide the required quarterly reporting information.

Judge Fisher moved that the Commission initiate mediation with Eastpointe given the system's failure to comply with the reporting requirements. Mr. Swor seconded the motion. The motion carried.

Chair Puerner joined the meeting at 12:10 pm and assumed the role of Chair for the balance of the meeting.

Chair Puerner provided a report on his activities since the June meeting. He updated Commissioners on his meeting with Director Orlene Hawks and advised that he and Ms. Khogali will be meeting with members and staff of the Liquor Control Commission at her suggestion. Director Hawks suggested meeting might be an opportunity to share information with a long-standing commission about governance and process that would benefit the MIDC.

Chair Puerner informed the Commission that he will create an ad hoc committee to revisit general statements of policy that need to be clarified for staff and the Commission's constituencies. Commissioners who are interested in participating were invited to let Chair Puerner know during the Commission's recess.

The Commission recessed from 1:06 pm until 1:27 pm.

Mr. Hinton offered public comments in support of Livingston County's plan.

Chair Puerner noted that the City of Oak Park submitted a letter requesting that its plan be adopted in lieu of public comment. Ms. Khogali distributed the letter via email to Commissioners.

Discussion and Consideration of FY 20 Compliance Plans

Malpractice Insurance as part of compliance plan cost analyses

Sanilac County and the 25th District Court in Lincoln Park included malpractice insurance in their respective compliance plans. Staff has recommended that both plans be approved. This is a new expense and was not previously included in compliance plans.

Mr. Shea moved to consider the inclusion of malpractice insurance as part of the overall evaluation of the plans for Sanilac and Lincoln Park. Judge Fisher seconded the motion. The motion carried.

Reimbursement of costs from FY 19 included in FY 20 cost analyses

An indigent criminal defense system that expends funds in excess of its local share and the approved MIDC grant to meet unexpected needs in the provision of indigent criminal defense services in FY 19 can include these excess costs in the system's FY 20 grant request pursuant to MCL 780.993(16). The expenses must be reasonably and directly related to indigent criminal defense functions. Ms. McCowan provided an overview of the issue. The Commission will discuss these costs as part of its overall evaluation of the plans.

Committee Review

The Commissioners received a list of the committee meetings that occurred prior to the July 23 meeting.

The Construction Committee did not meet.

The Committee considering District Court funding units requesting more than \$500,000 in grant funding, chaired by Mr. Walker, held a conference call on July 19. Mr. Walker provided an overview of the Committee's discussion. The following plans were discussed:

- 16th District Court – Livonia
- 25th District Court – Lincoln Park
- 34th District Court – Romulus
- 37th District Court – Warren/Centerline
- 38th District Court – Eastpointe
- 39th – Roseville
- 43-1 District Court – Hazel Park
- 43-3 District Court – Madison Heights
- 44th District Court – Royal Oak
- 45th District Court – Oak Park

- 50th District Court – Pontiac

The Committee considering Systems requesting more than \$1 million in grant funding, chaired by Mr. Puerner, held a conference call on July 22. Mr. Puerner provided an overview of the Committee’s discussion. The following plans were discussed:

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| • Allegan/Van Buren Counties | • Lapeer County |
| • Berrien County | • Lenawee County |
| • Calhoun County | • Livingston County |
| • Clare/Gladwin Counties | • Macomb County |
| • Genesee County | • Ottawa County |
| • Ingham County | • Saginaw County |
| • Isabella County | • St. Clair County |
| • Jackson County | • Washtenaw County |
| • Kent County (17 th Circuit/63 rd District Courts) | |

The Committee on Ancillary Spending, chaired by Judge Collins, held a conference call on July 22. Mr. Eaman provided an overview of the Committee’s discussion. The following plans were discussed:

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| • Arenac County | • 43-1 District Court – Hazel Park |
| • Cheboygan County | • 43-3 District Court – Madison Heights |
| • Clare/Gladwin Counties | • 44 th District Court – Royal Oak |
| • 23 rd District Court – Taylor | • 50 th District Court - Pontiac |
| • 27 th District Court – Wyandotte | • Genesee County |
| • 28 th District Court – Southgate | • Grosse Pointe Farms |
| • 29 th District Court – Wayne | • Grosse Pointe Woods |
| • 30 th District Court – Highland Park | • Lapeer County |
| • 31 st District Court – Hamtramck | • Mason County |
| • 33 rd District Court - Trenton | • Newaygo County |
| • 37 th District Court – Warren/Centerline | • Osceola County |
| • 38 th District Court – Eastpointe | • Wexford/Missaukee Counties |

Substantive Review for Commission Decisions

Disapprove plans and cost analyses

MIDC staff recommend that both the plans and the cost analyses for the following systems be disapproved:

- Berrien County

- 27th District Court – Wyandotte
- 38th District Court – Eastpointe
- Lapeer County
- Grosse Pointe Farms
- Grosse Pointe Woods

Ms. McCowan provided an overview of the plans.

Mr. Haveman moved that the staff recommendation be adopted and that the plans and cost analyses for the systems listed above be disapproved. Mr. Walker seconded the motion. The motion carried.

Approve plans and disapprove cost analyses

The Commission considered the plans by region.

For the region including Lapeer, Macomb, Oakland and St. Clair, MIDC staff recommend that the following plans be approved and the associated cost analyses be disapproved:

- 37th District Court - Warren and Centerline
- 39th District Court - Roseville and Fraser
- 43-1 District Court - Hazel Park
- 43-3 District Court - Madison Heights
- 45th District Court - Oak Park
- Macomb 16th Circuit & 42-1, 42-2 District Courts
- St. Clair County

Ms. McCowan and Ms. Smithson provided an overview of the plans.

Mr. Nizol and Ms. Shanker offered public comment in support of Macomb County's plan and cost analysis.

Mr. Walker moved that the staff recommendation for Lapeer, Macomb, Oakland and St. Clair be adopted; that the plans for the seven systems listed above be approved and the associated cost analyses be disapproved. Ms. Green seconded the motion. The motion carried.

For the Wayne County region, MIDC staff recommend that the following plans be approved and the associated cost analyses be disapproved:

- D 23 – Taylor
- D 24 - Allen Park
- D 35 – Plymouth

Ms. McCowan and Ms. McDoniel provided an overview of the plans.

Mr. Shea moved that the staff recommendation for the Wayne County region be adopted; that the plans for the three systems listed above be approved and the associated cost analyses be disapproved. Mr. Swor seconded the motion. The motion carried.

For the Mid-Michigan region, MIDC staff recommend that the following plans be approved and the associated cost analyses be disapproved:

- Huron County
- Iosco County
- Isabella County
- Oceana County
- Saginaw County

Ms. McCowan and Ms. Klimaszewski provided an overview of the plans.

Ms. Elaine Moore offered comments via telephone in support of Huron County's plan.

Ms. Karen Moore offered comments in support of Oceana County's plan.

Ms. Spencer-Noggle offered comments on behalf of Isabella County's plan.

Judge Boyd moved that the plans for Huron, Iosco, Isabella and Saginaw Counties be approved and that the associated cost analyses be disapproved. Ms. Brame seconded the motion. The motion carried. Ms. McAvoy abstained from the discussion and vote because of her employment with Isabella County.

Judge Boyd moved that both the plan and the cost analysis for Oceana County be approved. Ms. Brame seconded the motion. The motion carried. Mr. Eaman abstained from the discussion and the vote because of his residency in the county.

For the South Central Michigan region, MIDC staff recommend that the plans for the following systems be approved and the associated cost analyses be disapproved:

- Jackson County
- Lenawee County
- Livingston County

Ms. McCowan and Ms. Staley provided an overview of the plans.

Ms. Brame moved that the staff recommendation for the South Central Michigan region be adopted; that the plans for the three systems listed above be approved and the associated cost analyses be disapproved. Mr. Eaman seconded the motion. The motion carried.

For the Western Michigan region, MIDC staff recommend that the plans for the following systems be approved and the associated cost analyses be disapproved:

- Calhoun County
- 61st District Court – Grand Rapids
- Muskegon County

- Ottawa County

Ms. McCowan and Ms. Prentice-Sao provided an overview of the plans.

Connie Bohatch offered comments in support of the plan for the 61st District Court in Grand Rapids.

Mr. Shea moved that the staff recommendation for the Western Michigan region be adopted; that the plans for the four systems listed above be approved and the associated cost analyses be disapproved. Mr. Haveman seconded the motion. The motion carried. Judge Fisher abstained from the discussion and vote because of a conflict of interest with the 61st District Court.

For the Northern Michigan region, MIDC staff recommend that the plans for the following systems be approved and the associated cost analyses be disapproved:

- Cheboygan County
- Marquette County
- Wexford/Missaukee Counties

Ms. McCowan and Ms. Wangler provided an overview of the plans.

Ms. Green moved that the staff recommendation for the Northern Michigan region be adopted; that the plans for the three systems listed above be approved and the associated cost analyses be disapproved. Mr. Shea seconded. The motion carried.

The Commission recessed for 15 minutes. Ms. Brame left the meeting and rejoined by telephone at 3:15 pm. Mr. Clement and Mr. Swor left the meeting at 3:15 pm.

Approve plans and cost analyses

For the Lapeer, Macomb, Oakland and St. Clair region, MIDC staff recommend that the plans and cost analyses for the systems listed below be approved:

- 41-a-1 District Court – Sterling Heights
- 44th District Court - Royal Oak
- 48th District Court - Bloomfield
- 50th District Court - Pontiac

Ms. McCowan and Ms. Smithson provided an overview of the plans.

Mr. Eaman moved that the staff recommendation for the Lapeer, Macomb, Oakland and St. Clair region be adopted and that the plans and cost analyses for the four systems listed above be approved. Ms. Green seconded the motion. The motion carried, Judge Fisher voting no. Mr. Krizan abstained from the discussion and vote because of his employment with Royal Oak.

For the Wayne County region, MIDC staff recommend that the plans and cost analyses for the systems listed below be approved:

- 16th District Court – Livonia
- 17th District Court – Redford
- 18th District Court – Westland
- 25th District Court - Lincoln Park
- 28th District Court – Southgate
- 29th District Court – Wayne
- 30th District Court - Highland Park
- 31st District Court – Hamtramck
- 32a District Court - Harper Woods
- 33rd District Court – Trenton
- 34th District Court – Romulus

Ms. McCowan and Ms. McDoniel provided an overview of the plans.

Mr. Eaman moved that the staff recommendation for the Wayne County region be adopted and that the plans and the cost analyses for the eleven systems listed above be approved. Mr. Krizan seconded the motion. The motion carried.

For the Mid-Michigan region, MIDC staff recommend that the plans and cost analyses for the systems listed below be approved:

- Arenac County
- Bay County
- Clare/Gladwin Counties
- Mason County
- Mecosta County
- Midland County
- Newaygo County
- Ogemaw County
- Osceola County
- Roscommon County
- Sanilac County
- Tuscola County

Ms. McCowan and Ms. Klimaszewski provided an overview of the plans.

Ms. McAvoy moved that the staff recommendation for the Mid-Michigan region be adopted and that the plans and cost analyses for the twelve systems listed above be approved. Ms. Green seconded the motion. The motion carried.

For the South Central Michigan region, MIDC staff recommend that the plans and cost analyses for the systems listed below be approved:

- 15th District Court – City of Ann Arbor
- Eaton County
- Genesee County
- Ingham County
- Washtenaw County

Ms. McCowan and Ms. Staley provided an overview of the plans.

Ms. McAvoy moved that the staff recommendation for the South Central Michigan region be adopted and that the plans and costs analyses for the five systems listed above be approved. Mr. Eaman seconded the motion. The motion carried, Judge Fisher voting no. Judge Boyd abstained from the

discussion and vote because of his employment with Ingham County. Mr. DeLeeuw abstained from the discussion and vote because of his employment with Washtenaw County.

For the Western Michigan region, MIDC staff recommend that the plans and cost analyses for the systems listed below be approved:

- Allegan/Van Buren Counties
- Kent County (16th Circuit and 63rd District Courts)

Ms. McCowan and Ms. Prentice-Sao provided an overview of the plans.

Judge Fisher moved that the staff recommendation be adopted and that the plans and cost analyses for the two systems listed above be approved. Judge Boyd seconded the motion. The motion carried. Ms. Brame abstained from the discussion and vote because of a conflict of interest with the Kent County plan.

For the Northern Michigan region, MIDC staff recommend that the plans and cost analyses for the systems listed below be approved:

- Benzie/Manistee Counties
- Leelanau County
- Schoolcraft County

Ms. McCowan and Ms. Wangler provided an overview of the plans.

Ms. Green moved that the staff recommendation be adopted and that the plans and cost analyses for the three systems listed above be approved. Mr. Krizan seconded the motion. The motion carried.

Failure to submit FY 20 Compliance Plan and/or Cost Analysis

Two systems, the 22nd District Court in Inkster and the 36th District Court in Detroit, did not submit compliance plans or cost analyses for FY 20.

Judge Boyd moved that the agenda be amended to reflect this item as an action item. He further moved that the systems' failure to submit the FY 20 plan or cost analysis be treated as incomplete, that the Commission disapprove the plan and disapprove the cost analysis, and that this decision be communicated to the systems. Ms. Buddin seconded the motion. The motion carried.

Request for Authorization to Pay Planning Costs

MIDC staff request permission to process planning payments to those systems whose plans have been approved. Judge Boyd moved that staff be given this permission. Mr. McMillin seconded the motion. The motion carried.

Several local systems in Macomb County with third-class district courts are interested in forming a Regional Managed Assigned Counsel (RMAC). The City of Sterling Heights submitted a proposal for

the Commission's consideration and is requesting up to \$75,000 to hire and supervise the consultants needed to: design the office, meet with key stakeholders, draft any necessary inter-local operating agreements, create a budget, prepare operating rules and procedures, and perform other tasks as necessary. The eight systems involved with the projects submitted letters of support. This project would be funded from the planning costs available to systems.

Judge Boyd moved that up to \$75,000 be awarded to City of Sterling Heights to research the feasibility of creating a Regional Managed Assigned Counsel system in Macomb County. Ms. McAvoy seconded the motion. The motion carried.

Chair Puerner announced the members that were interested in serving on the **AD HOC COMMITTEE CREATED EARLIER IN THE MEETING. THIS COMMITTEE WILL REVISIT GENERAL STATEMENTS OF POLICY THAT NEED TO BE CLARIFIED FOR STAFF AND THE COMMISSION'S CONSTITUENCIES.** ~~Ad-Hoc Committee on Funding Standards.~~ Judge Boyd will serve as Chair. The following Commissioners will be on the Committee: Judge Fisher, Ms. Brame, Ms. Green, Mr. McMillin, Mr. Swor, Mr. DeLeeuw.

Mr. McMillin moved that the meeting be adjourned. Mr. Eaman seconded the motion. The motion carried. The meeting adjourned at 4:41 pm.

Respectfully submitted,

Marcela Westrate